

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

LUANN F. CRANE

JUDGMENT IN A CIVIL CASE

V.

GENERAL ELECTRIC CAPITAL CORPORATION
Servicing agent for GOVERNMENT NATIONAL
MORTGAGE ASSOCIATION

CASE NUMBER: CV193-182

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came on for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the Order of this Court of July 5, 1994, the Bankruptcy Court's Order of September 22, 1993, is VACATED.

IT IS FURTHER ORDERED AND ADJUDGED that this case be REMANDED to the Bankruptcy Court for further proceedings consistent with this decision and with instructions to GRANT the debtor's motion to allow late filed claim.

July 5, 1994

HENRY R. CRUMLEY, JR.
Clerk

Scarlett B. Collins
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE: * Chapter 13 Bankruptcy
* Case No. 91-12289-JSD
LUANN F. CRANE,
*
*
Debtor *
*
_____ *

LUANN F. CRANE *
*
*
Appellant, *
*
v. * CIVIL ACTION
* CV193-182
*
GENERAL ELECTRIC CAPITAL *
CORPORATION, servicing agent *
for GOVERNMENT NATIONAL *
MORTGAGE ASSOCIATION *
*
Appellee. *

ORDER ON APPEAL

Luann F. Crane appeals an Order entered September 22, 1993, in her Chapter 13 case by United States Bankruptcy Judge John S. Dalis, of this district. The Order in question grants a motion for relief from the automatic stay of 11 U.S.C. §362(a)¹ filed by General Electric Capital Corporation (G.E. Capital), the servicing agent for Government National Mortgage Association (GNMA) on the underlying debt. Relief from the stay, if

¹All statutory references hereafter are to Title 11, U.S.C.

sustained on appeal, will permit G.E. Capital to foreclose its security interest in Crane's mobile home. As

foreclosure of Crane's mobile home would effectively moot this appeal, by this Court's Order dated October 25, 1993, G.E. Capital's enforcement of the Bankruptcy Court's Order was stayed pending the outcome of this appeal.²

The subject property is a 1984 Vintage Walton manufactured home. The Cranes are not the first owners of the mobile home. The original owners, Melissa and Michael Vitek, purchased it from Colonial Mobile Homes in July 1984. Pursuant to the terms of an installment agreement executed by the Viteks in connection with the sales transaction, Colonial Mobile Homes retained a security interest in the mobile home. Colonial Mobile Homes sold the contract, including the security interest, to Southern Guaranty Corporation, who sold the same to GNMA. GNMA presently holds the security interest in the mobile home.

In June 1986, James and Ann Kelly assumed the Viteks' outstanding debt on the mobile home pursuant to an assumption agreement executed in favor of Southern Guaranty Corporation. On May 7, 1987, the Kellys sold the mobile home to Ms. Crane and her

²The October 25, 1993, Order provides that upon the debtor's failure to meet certain conditions, "G.E. Capital may immediately petition this Court for relief from this Stay." (October 25, 1993, Order at 3.) Having not heard to the contrary from G.E. Capital, the Court assumes that to date the debtor has complied with the Order.

husband, George Crane. The contract of sale signed by the Kellys and the Cranes provides in full as follows:

Sold to Luann & George A. Crane one 1984 Mobile Home Make Vintage Model Walton 14/70 ID#0642 for

\$800.00 Eqt. & \$250.00 a Mo. for 12 Years or 144 Mo. owner Financing Buyer will pay all Taxes & Insurance for the Mobile Home For the term of 12 Years Or until payed [sic] in full payments due on the 15th. of each Mo. & cannot be no more [sic] than 15 days late Buyer can move Mobile Home as long as Seller Knows Where along with Mobile Home is a 3 TON A/C unit Magic Chef Range Under Pinning.

Ins. First Mortgage Home Owners Funding Corp.
P.O. Box 10998 Dallas, Texas 75207-0998 Acc. #
3126521.

The contract does not provide that the Cranes assumed the Kellys' debt to GNMA.

For reasons not revealed in the record, in early 1991 the Cranes ceased paying the Kellys and began making direct payments to Home Owners Funding Corporation (Home Owners Funding), the servicing agent on the debt at that time. Henceforth, Home Owners Funding dealt directly with the Cranes in collecting payments on the Kellys' account, account number 3126521. No agreement was ever executed by the Cranes to assume the debt on the account, however.

In May and November of 1991, the Cranes received delinquency notices from Home Owners Funding regarding account number 3126521. On December 6, 1991, Luann Crane sought bankruptcy protection by filing a Chapter 13 petition and proposed

plan of reorganization.³ Schedule D attached to Crane's petition lists "Homeowners Funding Corp." as a secured

creditor.⁴ Schedule D indicates that the debtor and her husband owe Homeowners Funding \$14,043.00, secured by the Cranes' jointly-owned mobile home valued at \$4,000.00.

Paragraph 2(b) of Ms. Crane's proposed Chapter 13 plan, the focal point of this appeal, provides:

Secured creditors shall retain liens securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: Homeowners Funding Corp., as agent for the Government National Mortgage Association will be paid the value of the mobile home of \$4,000 (Account No. 3126521), together with interest at 8% by the Trustee.

Although aware of Crane's bankruptcy proceeding and proposed plan, neither Home Owners Funding or G.E. Capital filed a proof of claim respecting the debt to GNMA, nor did the debtor on either servicing agent's behalf.⁵

³George Crane did not join in Luann Crane's Chapter 13 petition, nor did he file his own.

⁴The schedules attached to Crane's petition do not indicate a debt owed to the Kellys.

⁵Home Owners Funding received notice of Luann Crane's Chapter 13 petition and proposed plan on December 31, 1991. On January 1, 1992, G.E. Capital assumed the servicing on the account from Home Owners Funding. On January 9, 1992, G.E. Capital received notice of the debtor's Chapter 13 petition and proposed plan.

To fund her Chapter 13 plan, Crane proposed to make monthly payments to the Chapter 13 Trustee in the amount of \$125.00 for a period of up to 60 months. No objection to Crane's proposed Chapter 13 plan was filed by any party in interest. On April 23, 1992, having determined after a confirmation hearing that Crane proposed her plan in good faith and that it complies with all provisions of Chapter 13, the bankruptcy judge confirmed Crane's plan.

On October 1, 1992, G.E. Capital filed a motion for relief from the automatic stay. In support of its motion, G.E. Capital argued, inter alia, that Crane's confirmed plan does not provide for its claim. Following a hearing, the Bankruptcy Court determined relief from the stay was appropriate and granted the motion. The bankruptcy judge agreed with G.E. Capital that Crane's confirmed Chapter 13 plan makes no provision for G.E. Capital's claim because the language "[c]reditors who file claims" precedes the proposed treatment of the subject claim, and no proof of claim was filed. The Bankruptcy Court held that G.E. Capital's interest (as servicing agent for GNMA) in the subject collateral is not "adequately protected" under the confirmed plan and, pursuant to §362(d)(1), lifted the stay.⁶

⁶In full, §362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

Crane then filed a motion to alter or amend judgment, or in the alternative, for a new trial, which the bankruptcy judge denied. Additionally, Crane moved for leave to file a late proof of claim on behalf of G.E. Capital. The record before me indicates that the Bankruptcy Court has not ruled on Crane's motion for leave to file a late proof of claim.

Every indication in the record is that since confirmation Crane has faithfully tendered the required plan payments to the Chapter 13 Trustee's office. She is now a little over two years into her Chapter 13 reorganization. From "Exhibit A" attached to the confirmed plan, it appears that without the inclusion of a \$4,000.00 secured claim by G.E. Capital, payments nearly sufficient to pay all unsecured creditors 100% of their claims have already been made to the Chapter 13 Trustee's office. Thus, without the plan's inclusion of the claim at issue in this stay litigation, the plan will soon pay out and a discharge will be obtained. If the \$4,000.00 secured claim is included, the duration of the debtor's plan will be extended

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the debtor does not have equity in such property; and

(B) such property is not necessary to an effective reorganization.

significantly and, unless Crane's monthly payments are increased, unsecured creditors will receive much less than full payment of their claims.

On appeal, Ms. Crane challenges the Bankruptcy Court's interpretation of her plan to warrant stay relief. She maintains that by providing that "Homeowners Funding Corp. . . . will be paid the value of the mobile home of \$4,000 . . . together with interest at 8%," paragraph 2(b) of

her confirmed plan provides for G.E. Capital's claim. She further argues that G.E. Capital is bound to the provisions of her confirmed plan, including its valuation and payment provisions relative to the collateral and outstanding debt, by virtue of § 1327(a).⁷ G.E. Capital contends the Bankruptcy Court correctly determined that Crane's confirmed plan does not provide for its claim because no proof of claim was filed on behalf of

⁷In full, § 1327 provides:

Effect of confirmation.

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

G.E. Capital. G.E. Capital therefore argues that Crane's confirmed plan is not binding on it. There are no factual issues raised on appeal. The Bankruptcy Court's interpretations of the Bankruptcy Code are reviewed de novo. In re Chase & Sanborn Corp., 904 F.2d 588, 593 (11th Cir.

The issue in this appeal is whether the debtor's confirmed Chapter 13 plan adequately protects the interest of G.E. Capital in the mobile home, or, more specifically, whether the basis of the bankruptcy judge's determination that G.E. Capital's interest is not adequately protected is correct.⁸ Maintenance of the stay as to any secured creditor is conditioned upon adequate protection of the secured

⁸In support of its motion for relief from stay, G.E. Capital contended that it was entitled to relief from the stay under subsections (d)(1) and (d)(2) of 362. Subsection (d)(1) mandates stay relief upon a showing of "cause"; subsection (d)(2) mandates stay relief upon a showing that the debtor lacks equity in the property and that the property is not necessary to an effective reorganization. (See note 6, supra.) The Bankruptcy Court granted relief from stay on a "for cause" basis under subsection (d)(1). The Bankruptcy Court did not address G.E. Capital's contentions in support of relief from stay pursuant to subsection (d)(2).

Stay litigation is properly confined to the framework of 362(g), pursuant to which the moving party bears the burden of proof on the issue of the debtor's equity in the property and the non-moving party bears the burden of proof on all other issues raised by the motion. Since the bankruptcy judge made no findings of fact relative to G.E. Capital's contentions under ~ 362(d)(2) and held only that the debtor did not meet her burden of proof on the issue of adequate protection, this Court's review on appeal is necessarily confined to the issue of whether the Bankruptcy Court correctly held that the debtor failed to carry her burden of proof on the issue of adequate protection because the plan fails to provide for G.E. Capital's claim.

creditor's interest in property held by the debtor while the bankruptcy case is pending. Thus, 362(d)(1) requires that relief from stay be granted to a secured creditor whose interest in the debtor's property is not adequately protected. Where adequate protection is the issue, the non-moving party, here Ms. Crane, bears the burden of proof. §362(g)(2).

Typical 362(d)(1) litigation in a Chapter 13 context involves determining whether lien and payment provisions contained in the plan relative to a secured creditor's claim

"adequately protect" the secured creditor's property interest. Whether this plan's provisions for lien retention and payment of \$4,000.00 plus interest at eight percent per annum to G.E. Capital adequately protect G.E. Capital's property interest, however, is not the issue raised in this appeal. At issue is whether these provisions actually "provide for" the claim or are vitiated in the absence of a proof of claim by the language preceding these provisions that seems to condition the plan's inclusion of the claim on the filing of a proof of claim.

Crane clearly meant to deal with this debt in her Chapter 13 reorganization.⁹ Her attempted treatment of the claim

⁹In this appeal, G.E. Capital does not appear to derive its argument that paragraph 2(b) does not provide for its claim from the fact that paragraph 2(b) lists "Homeowners Funding Corp.," rather than "General Electric Mortgage Company," as the creditor. At the time Crane filed her Chapter 13 petition and proposed plan, Home Owners Funding was the servicing agent with which she had dealt for some time. Although shortly after she filed this petition, G.E. Capital assumed the servicing on the

is objectionable to G.E. Capital, however, because G.E. Capital disagrees with the debtor's valuation (see G.E. Capital's motion for relief from stay, p. 3, valuing the mobile home at \$9,500.00), and, moreover, has no personal recourse against Crane or her husband for a deficiency claim since the Kellys, not the Cranes, are personally liable on the debt. Since no proof of claim--the vehicle intended by the Bankruptcy Code

and Rules for properly raising and resolving claim disputes--was filed regarding this debt, there has been no adjudication of the underlying valuation dispute.

In granting G.E. Capital's motion for relief from stay, the bankruptcy judge expressed concern that Crane's argument, if accepted, "effectively would contravene the claim allowance and valuation procedures provided for by the Bankruptcy Code" because "[u]nder those procedures, there can be no valuation of a claim without a proof of claim first being filed and allowed."

(Bankruptcy Court's Order at 8.) This concern is well-founded. The Bankruptcy Code and Rules effect a deliberate valuation and claim allowance scheme. See generally In re Simmons, 765 F.2d 547, 551-53 (5th Cir. 1985) (canvassing the codal structure

Kellys' account, there is no dispute that Ms. Crane intended to address the debt owed on account No. 3126521 in paragraph 2(b) of her plan and that the plan could be easily amended to reflect the current servicing agent on the subject debt if the plan is otherwise acceptable.

of allowance or disallowance of creditor claims). Adherence to this scheme is essential to the smooth administration of any bankruptcy proceeding.

However, the Bankruptcy Code is remedial legislation and, as such, should be liberally interpreted in favor of the salutary purposes of its enactment, especially the rehabilitation of the debtor. Local Loan Co. v. Hunt, 292 U.S. 234, 244-45 (1934). "It is well accepted that the bankruptcy court is guided by the principles of equity, and that the court will act to assure that '. . . technical considerations will not prevent substantial justice from being done.' " In re Intern. Horizons, Inc., 751 F.2d 1213, 1216 11th Cir. 1985) (quoting Pepper v. Litton, 308 U.S. 295, 305

(1939)). The equities of this case favor a straightforward judicial inquiry and determination of value, lien and debt, versus a technical result that follows from a creditor's obvious decision to hide and watch until the time favors a grab for the debtor's most necessary asset.

In the confirmation order, the bankruptcy judge found that the debtor proposed her plan, including paragraph 2(b), in good faith. G.E. Capital received notice of Crane's bankruptcy case and proposed treatment of its claim in her plan and, notwithstanding ample opportunity, failed to raise an issue regarding the plan's valuation of the mobile home and treatment of its claim. Further, once the debtor realized that the absence of

a proof of claim could prove fatal to her plan's treatment of the subject claim, she immediately sought leave to file a late proof of claim on G.E. Capital's behalf, contending her omission was due to excusable neglect. As previously indicated, that motion is still pending.

Although the time permitted under Bankruptcy Rules for filing a proof of claim by either party has lapsed,¹⁰ leave to file a late proof of claim on a creditor's behalf may be permitted if it is shown that the debtor's failure to file was due to "excusable neglect." Fed. R. Bankr. P. 9006(b)(1).¹¹

¹⁰The Bankruptcy Rules provide in relevant part:

TIME FOR FILING. In a . . . chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to 341(a) of the [Bankruptcy] Code. . . .

Fed. R. Bankr. P. 3002(c).

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to 341 of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c). . . .

Fed. R. Bankr. P. 3004. In Crane's Chapter 13 proceeding, the first date set for the 341(a) meeting of creditors was January 3, 1992.

¹¹Rule 9006(b) states:

(b) Enlargement.

(1) IN GENERAL. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of the court, the court for cause shown may at any time in its discretion (1) with or without motion

See generally Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership, U.S., 113 S.Ct. 1489 (1993) (interpreting "excusable neglect" under Fed. R. Bankr. P. 9006(b)).

Regarding the excusable neglect standard, the Supreme Court has stated:

Chapter [13] provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors. In overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization. This context suggests that Rule 9006's allowance for late filings due to "excusable neglect" entails a correspondingly equitable inquiry.

Id., ___ U.S. at ___, 113 S.Ct. at 1495 (citations omitted).

The facts of this case support a finding of excusable neglect on debtor's part in not filing the proof of claim. The

or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) ENLARGEMENT NOT PERMITTED. The court may not enlarge the time for taking action under Rules 1007(d), 1017(b)(3), 2003(a) and (d), 7052, 9023, and 9024.

(3) ENLARGEMENT LIMITED. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

servicing of the debt changed hands from Home Owners Funding, with whom Crane had dealt for months, to G.E. Capital after her bankruptcy petition was filed. Confusion caused by multiple, successive servicing agents may explain the debtor's failure to file a proof of claim for a debt she obviously intended to include in her Chapter 13 plan. Crane's proposed Chapter 13 plan was confirmed on April 23, 1992, prior to her deadline for filing a proof of claim on the servicing agent's behalf (see note 10, supra), perhaps ratifying (in counsel's mind) an incorrect assumption that a proof of claim would not be necessary. And, most importantly, Crane's good faith in seeking to include this claim in her plan is unchallenged.

Accordingly, I find that Crane's failure to file the proof of claim was the result of "excusable neglect" as that phrase has been defined by the Supreme Court. See id. Therefore, under the Bankruptcy Rules, the debtor may file a late proof of claim on G.E. Capital's behalf. Fed. R. Bankr. P. 9006(b)(1). The debtor is instructed to file the proof of claim within ten days of the date this Order, should she still wish to do so.

The debtor's filing of the proof of claim on G.E. Capital's behalf will eliminate the textual ambiguity in paragraph 2(b) of Crane's plan and any argument that the plan does not provide for G.E. Capital's claim. G.E. Capital is bound to the

provisions of Crane's confirmed plan. § 1327(a).¹² As the failure of the plan to provide for G.E. Capital's claim was the sole basis for lifting the stay, the Bankruptcy Court's September 22, 1993, Order is **VACATED**. The case is REMANDED to the Bankruptcy Court for further proceedings consistent with this decision and with instructions to **GRANT** the debtor's Motion to Allow Late Filed Claim.

ORDER ENTERED at Augusta, Georgia this 30th day of June, 1994.

DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT JUDGE

¹²The Court emphasizes that this Order's resolution of Crane's appeal is limited to the issue of whether G.E. Capital's property interest, that is, its lien, is adequately protected during the pendency of this Chapter 13 proceeding for purposes of § 362(d)(1).